SUBJECT INDEX

	Page
INTRODUCTION	2
Purpose of the Law	4
Result	5
THE WISCONSIN MIMIMUM WAGE ACT	6
HISTORY	6
Employers aid in determining living wage	6
Action by Commission postponed to await decision in Oregon case, 243 U. S. 629	6
Commission petitioned to act	7
Public hearings and final report	8
ORDER	8
Operation of the order	10
Difficulty in telephone industry	10
Telephone order made	10
The telephone order reads as follows:	11
Difficulties in exchanges in private residences	12
Difficulties in hospitals and sanitariums	13
Sweat shop workers	14

Difficulties in tobacco stemming warehouses 14

Difficulties with learners in beauty parlors 14

Petition for new orders and new investigations 15

REVISED MINIMUM WAGE ORDERS 15

Definitions 15

Women employes 17 and over—boys over 17 16

Boys and girls, 14 and 15 years of age. 16

Seasonal industries 17

Limitation upon number of learners... 17

Allowance for board and lodging 17

Payment of wages on other than time basis 17

Records to be kept by the employer.... 18

Posting of order 18

When effective 19

EXTENT OF THE LAW 19

EFFECTS 19

Report of Industrial Commission to Attorney General of Wisconsin, February 10, 1923 19

General 19

Tobacco stemming warehouses 20
Pea canneries 21
Telephone exchanges 22
Stores 22
Home work or sweat shop system..... 23
Sweat shop system drives industry out of state 24
Wisconsin factory-made knitted product not hampered in competition 25
FURTHER EFFECTS 25
Learners more rapidly developed..... 25
No displacement of women by men ... 25
Minors not replaced by adults 26

IN THE

Supreme Court of the United States

No. 795

JESSE C. ADKINS, *et al.*, Constituting the Minimum Wage Board of the District of Columbia, *Appellants*,

v.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, A Corporation, *Appellee*.

No. 796

JESSE C. ADKINS, *et al.*, Constituting the Minimum Wage Board of the District of Columbia, *Appellants*,

v.

WILLIE A. LYONS, *Appellee*.

BRIEF OF AMICI CURIAE

HERMAN L. EKERN,
Attorney General of the State of Wisconsin,

J. E. MESSERSCHMIDT,
Assistant Attorney General,

FRED M. WILCOX,
Chairman, Industrial Commission of Wisconsin,
AMICI CURIAE.

INTRODUCTION

The State of Wisconsin appears as amicus curiae in this action because a decision against the constitutionality of the act involved in this action may directly affect the constitutionality of the Minimum Wage Law of Wisconsin.

The Wisconsin law was enacted in 1913. It is administered by the Industrial Commission. The law provides for investigations, hearings, and the making of orders in a manner quite similar to that provided for under the act relating to the District of Columbia. Investigations were begun by the minimum wage board and hearings were had preliminary to the making of orders fixing minimum wages for women and children.

In view of the questions which were raised with regard to the constitutionality of the Oregon law, which questions were considered and decided upon in the case of *Stettler v. O'Hara*, 69 Oregon 519, 537, and in *Stettler v. O'Hara*, 243 U. S. 629, the commission did not attempt to make any order until the case had been finally decided in the Supreme Court of the United States on April 9, 1917.

Soon after this decision, on June 27, 1919, an order was made fixing the minimum wage for women providing:

1. A minimum wage of not less than 22c per hour for an experienced female or experienced minor over seventeen years of age.

2. Not less than 18c per hour during the first three months of learner's period, and not less

than 20c per hour for the second period of three months.

3. Permit children between sixteen and seventeen years of age who have completed three months in the industry not less than 20c per hour, and permit children producing the same output as employes in a higher wage classification not less than the minimum wage rates for such class (This was later amended).

4. Define experience and learning period.

5. Percentage of those receiving less than 22c limited to 25% of total employes.

6. Allowance for board and lodging.

7. Payment on the piece basis or system other than time rate.

8. Posting copy of the order in a conspicuous place in the work room.

Special orders and concessions were subsequently made to meet the particular difficulties encountered in telephone industries, hospitals and sanitariums, tobacco stemming warehouses, and beauty parlors, and on the 28th day of June, 1921, a further general order was made.

After investigation, the Advisory Wage Board unanimously recommended fixing the minimum wage rate at 25c per hour in all cities with a population of 5,000 and over, and at 22c per hour in other places. Investigation showed that the minimum wage effective August first, 1919, as well as the one established August first, 1921, was considerably below the market wage.

Purpose of the Law

The law was not intended to supplant collective or individual bargaining of employers and employes as to wages, but was to meet certain oppressive conditions, and aid those who were in disadvantageous positions to make contracts with employers. It was to protect the minors and women in a more scientific way from that attempted under the older laws. Contracts by minors and women have always been subject to restrictions and regulations, in order to protect the individual and, indirectly, the people in general.

It was to stop the exploitation of those who are not able to protect themselves, to place the two parties to the contract of wages on a par, and restrain the oppressor from making unconscionable contracts, which must necessarily have the effect of forcing its victims to unlawful and immoral practices and becoming a burden and danger to society. It aimed to strike at the lowest scale of wages, and leaves those receiving a fair compensation to the laws of competition. It was also intended to put this competition on a more equitable and higher plane.

The fact that women have not received and do not receive equal pay with men for equal work is universally recognized. Thus, the War Labor Conference Board, under date of March 29, 1918, said, in its official report:

> "If it shall become necessary to employ women on work ordinarily performed by men, they must be allowed equal pay for equal

work and must not be allotted tasks disproportionate to their strength."

Result

The result shows that the Minimum Wage Law has been a potent cause in raising the lower end of the wage scale to the level of the cost of living. In some industries it decreased the number of hours of labor during the week. It increased the wages of telephone operators 33 1/3%, as a whole. In some industries, the whole wage scale was affected. These are tobacco stemming, small telephone exchanges, stores in rural districts and small cities, and home workers. Learners are more rapidly developed under this law than before and the result has not been to displace women by men nor minors by adults, and the Wisconsin-made knitted products are not hampered by competition, as a result of this law.

When the Minimum Wage Order was made in June, 1919, the Wisconsin legislature was in session, and two successive legislatures have been in session since. But so satisfactory have been the results obtained under the Minimum Wage Orders that it has given universal satisfaction. No attempt has been made to repeal or weaken the law. Not a single bill has been introduced into either house of the legislature to repeal or restrict the operation of the law, and there have been no appeals whatever to the courts from any order of the Commission, under the law.

THE WISCONSIN MINIMUM WAGE ACT

HISTORY

Ch. 712 of the Wisconsin Session Laws of 1913 makes it a requirement in Wisconsin that all employers of women and minors shall pay to such women and minor employes a living wage. The term "living wage" is defined in the statute as "compensation for labor paid whether by time, piece-work, or otherwise, sufficient to enable the employe receiving it to maintain himself or herself under conditions consistent with his or her welfare." The only women and minors excepted are regularly indentured apprentices and those who are unable to earn the living wage, to whom a special license may be granted by the Industrial Commission fixing a wage commensurate with their ability.

Employers aid in determining living wage

This law made it the duty of the Industrial Commission to determine, after investigation, the living wage for women and minor employes. It also provided that the Commission appoint an Advisory Wage Board selected so as to fairly represent employers, employes, and the public, to assist in its investigations and determinations.

Action by Commission postponed to await decision in Oregon Case, 243 U. S. 629

In 1914, the Commission made a state wide investigation to determine the actual cost of liv-

ing of self-supporting women, and an Advisory Wage Board was organized at that time. No action was taken because of the question regarding the constitutionality of the law, until after the decision of *Stettler v. O'Hara,* 69 Ore. 519 was affirmed in the United States Supreme Court (243 U. S. 629).

Commission petitioned to act

The Wisconsin Federation of Labor, The Women's League of Wisconsin, and The Central Council of Social Agencies, in Milwaukee, on May 21, 1918, filed a verified petition alleging that women and minor employes in the state were being paid less than a living wage, and asking the Industrial Commission to proceed with a determination of the living wage. An Advisory Wage Board was then organized by the Industrial Commission, the employer and employe members of which were nominated by the principal organizations of employers and employes of the state. The representatives of the public were selected after a conference with the representatives of the employers and employes.

Immediately after the organization of this Advisory Wage Board, investigations were made under its direction by the Women's Department of the Industrial Commission, to determine the cost of living of self-supporting women employes.

Public hearings and final report

After the completion of these investigations, public hearings were held in different sections the state. At each of these hearings members of the Advisory Wage Board were present, in addition to the members of the Commission. Following these hearings all of the evidence was considered by the Advisory Wage Board, and at a meeting held on June 20, 1919, this Board made its final recommendations to the Industrial Commission. In accord with the final recommendations made by the Advisory Wage Board, the Industrial Commission on June 27, 1919, adopted the minimum wage order No. 1 reading as follows:

ORDER

1. No employer shall employ any experienced female or experienced minor employe over 17 years of age, in any occupation, trade, or industry throughout the state at a wage rate of less than 22 cents per hour.

2. During the first three months of the learning period, the wage paid shall not be less than 18 cents per hour. During the second three months of the learning period, the wage paid shall not be less than 20 cents per hour.

3. Permit children shall be paid a wage of not less than 18 cents per hour. Permit children between 16 and 17 years of age who have completed three months in the industry shall be paid not less than 20 cents per hour. Permit children producing the same output as employes in a higher wage classification

shall be paid not less than the minimum wage rate for such class.[1]

4. For the purpose of this order employes shall be deemed experienced after six months of employment in the trade or industry, whether for the same employer or for different employers. In seasonal industries operating only for a few months during the year no learning period is recognized, and all female and minor employes in such industries shall be paid a wage of not less than 22 cents per hour.

5. The total number of employes in any establishment who receive wages below 22 cents per hour, but not including indentured apprentices, shall not exceed 25% of the total number of women and minor employes normally employed.

6. Where board or lodging is furnished by the employer as part payment of wages, an allowance may be made therefor of not more than $4.50 per week for board and $2.00 per week for lodging.

7. Where payment of wages is made upon a piece basis or system other than time rate, the actual wage shall not be less than that provided for in this order.

8. Every employer employing females or minors shall keep posted a copy of this order, on a form prescribed by the Commission, in a conspicuous place in the general

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[1]This paragraph was amended on August 4, 1919, to read as follows: "3. Minors between 14 and 16 years of age shall be paid a wage of not less than 18 cents per hour. Minors between 16 and 17 years of age shall be paid not less than 20 cents per hour, if they have been employed in the industry for three months or more; otherwise, they shall be paid not less than 18 cents per hour. Minors producing the same output as employes in a higher wage classification shall be paid not less than the minimum wage rate for such class."

work room and in the women's dressing rooms.

Operation of the order

The living wage thus determined by the Industrial Commission was made uniform throughout the state. Very difficult questions at once arose upon the application of the minimum wage order to particular industries.

Difficulty in telephone industry

The most difficult of these problems was presented by the telephone industry. There are over five hundred telephone companies with independent exchanges in Wisconsin and at least forty-three of these have less than one hundred telephones. At practically all of these exchanges, no matter how small, some class of service is rendered for twenty-four hours of the day. However, in the smaller exchanges this service is intermittent, and even in many larger exchanges there are but few night calls and the operators get considerable periods of uninterrupted rest. The principal question for determination was the number of hours for which the telephone companies should pay their operators.

Telephone order made

A final order was made in this matter on Jan. 20, 1920, the underlying principle of which was that the telephone company must pay their

operators for all of the time which they can not employ productively in some other work, while the night operators must be paid for all of the time they do not get uninterrupted rest (Order No. 2).

The telephone order reads as follows:

1. Day Period. For the 16 hour period, 6 A. M. to 10 P. M. of the same day, telephone exchanges shall pay their operators as a minimum for the number of hours indicated in the following schedule:

SIZE OF EXCHANGE	BASIS OF PAY
Under 200 telephones,	11/16 of the time on duty.
200-219 telephones,	12/16 of the time on duty.
220-239 telephones,	13/16 of the time on duty.
240-259 telephones,	14/16 of the time on duty.
260-274 telephones,	15/16 of the time on duty.
275 telephones and more,	time on duty.

2. Night Rest Period. For the 8 hour period 10 P. M. of one day to 6 A. M. of the following day telephone exchanges shall pay their operators for all of the time they are subject to call which is not included within the longest period of uninterrupted rest which the operators get on at least two-thirds of the nights they are on duty, but no exchange having night service shall pay its operators for a lesser number of hours than is indicated in the following schedule:

SIZE OF EXCHANGE	BASIS OF PAY
Under 300 telephones,	2/8 of the time subject to call.
300-499 telephones,	3/8 of the time subject to call.
500-624 telephones,	4/8 of the time subject to call.
625-749 telephones,	5/8 of the time subject to call.
750-874 telephones,	6/8 of the time subject to call.
875-999 telephones,	7/8 of the time subject to call.
1000 telephones or more,	time subject to call.

(*Illustration*: An exchange of 350 subscribers in which the longest period of uninterrupted rest on 2/3 of the nights is 5 hours or more, is required to pay for only the minimum of 3 hours. If in such an exchange the longest period of uninterrupted rest which prevails 2/3 of the time is only 4 hours, the exchange must pay its operators for 4 hours; if the operators get only 2 hours of uninterrupted rest, they must be paid for 6 hours.)

Difficulties in exchanges in private residences

3. In telephone exchanges which are located in a private residence and operated by the members of the household, the payment of a wage for the operation of the switchboard of 50c per month per phone, will be regarded as a compliance with the minimum wage law, but if outside help is employed, such help must be paid upon the basis out-

lined in the first two paragraphs of this order.

4. In determining the classification of an exchange, all telephones for which switching is done must be counted, whether they are those of subscribers of the company owning the exchange, or those of some other company.

5. All telephone companies not later than March 1, 1920, shall make a report to the Industrial Commission showing the schedule of the hours of labor of their operators in force on February 1, 1920, the wage rates which they paid to each of these operators on that date, and all adjustments they have made of any back pay which may be due to their women and minor employes under General Order Number 1, made pursuant to the minimum wage law, which became effective August 1, 1919. Upon application, the commission will consider what is a fair adjustment of the pay of operators in exchanges located in separate offices which have less than 100 telephones, for the six months period from August 1, 1919, to January 31, 1920, and will deal with this problem by special orders.

Difficulties in hospitals and sanitariums

In addition to the telephone industry, there were other industries that required modification of the minimum wage law because of the peculiar conditions existing in such industries. In hospitals and sanitariums the question of the number of hours for which compensation should be paid arose. After a public hearing, the Advisory Wage Board recommended, and the Com-

mission adopted, an order requiring that the attendants should be paid a minimum wage for fifty-five hours per week as a maximum (Order No. 3).

Sweat shop workers

The Commission also issued an order providing that home workers, or sweat shop workers so-called, shall be paid such piece rates as shall yield the women and minor employes of the same employers who are of average ability and are employed in the factory, a minimum wage (Order No. 4).

Difficulties in tobacco stemming warehouses

In the tobacco stemming warehouses of the state it was found that a much larger percentage of elderly women was employed than in other industries. In lieu of the minimum wage computed on the hourly basis, tobacco warehouse owners were authorized to pay three and one-half cents per pound for stripping tobacco (Order No. 6).

Difficulties with learners in beauty parlors

Learners in beauty parlors were declared not subject to the minimum wage during the first two months (Order No. 7). This concession was granted on the grounds that the training received was peculiarly valuable and that the learners were of practically no value to the establishment during the first two months.

Petition for new orders and new investigations

On November 18, 1920, the Wisconsin Federation of Labor, the Central Council of Social Agencies of Milwaukee, and the Wisconsin Consumers League filed a new petition asking the Commission to revise the order and establish a minimum wage "more commensurate with a proper living standard." After the filing of this petition, investigations as to the changes in the cost of living since the adoption of the first order were made by the Women's Department of the Commission and hearings were held at the various points as to the cost of living in various sections. At the conclusion of the hearings, the Advisory Wage Board unanimously recommended to the Commission that the minimum wage rate should be fixed at twenty-five cents per hour in all cities with a population of five thousand or over, and at twenty-two cents per hour in cities, towns and villages with a lesser population.

Revised minimum wage orders

In accordance with this recommendation, the Industrial Commission on June 28, 1921, issued revised minimum wage order No. 1 as follows:

DEFINITIONS

1. An "experienced" employe is one who has worked six months or more in the trade or industry, whether for the same employer or different employers. Other employes are classified as "inexperienced."

A "seasonal industry" is one which reg-

ularly operates only a few months or less during the year.

The clause "cities with a population of 5,000 or more" includes communities and isolated establishments which are within the industrial area of such cities, although outside their territorial limits.

In determining the population of cities, the census of 1920 is controlling.

WOMEN EMPLOYEES 17 AND OVER—BOYS OVER 17

2. No employer shall employ any female over 17 years of age or any boy between 17 and 21 years of age in any occupation, trade, or industry, not a seasonal industry, at a lesser hourly rate than is indicated below:

Experienced employes in cities with a population of 5,000 or more..	25c
Experienced employes elsewhere...	22c
Inexperienced employes during the first 3 months in the industry.	16c
Inexperienced employes during the second 3 months in the industry	20c

BOYS AND GIRLS, 14 AND 15 YEARS OF AGE

3. Minors between 14 and 16 years of age shall be paid a wage of not less than 16c per hour during the first year of their employment in any occupation, trade, or industry, not a seasonal industry, and 20c per hour thereafter.

Minors between 16 and 17 years of age shall be paid a wage of not less than 20c per hour if they have been employed in the industry for six months or more; otherwise they shall be paid not less than 16c per hour.

Minors producing the same output as em-

ployes in a higher wage classification shall be paid not less than the minimum wage rate for such class.

SEASONAL INDUSTRIES

4. In seasonal industries all female and minor employes must be paid not less than 25c per hour in cities having a population of 5,000 or more, and not less than 22c per hour in other parts of the state.

LIMITATION UPON NUMBER OF LEARNERS

5. The total number of employes in any establishment who receive wages below those prescribed for experienced employes in subdivision 2 of this order, but not including indentured apprentices, shall not exceed 25 per cent of the total number of women and minor employes normally employed.

ALLOWANCE FOR BOARD AND LODGING

6. Where board and lodging is furnished by the employer as part payment of wages, an allowance may be made therefor of not more than $5.25 per week for board and $2.50 per week for lodging in cities with a population of 5,000 or more and of not more than $4.50 per week for board and $2.00 per week for lodging in other parts of the state.

PAYMENT OF WAGES ON OTHER THAN TIME BASIS

7. Where payment of wages is made upon a basis or system other than time rate, the actual wage shall not be less than provided

for in this order, but if the piece rates paid for any particular kind of work yield to 75 per cent of the experienced women and minor employes over 17 years of age employed thereon three cents per hour more than the rate prescribed for such employes in sub-division 2 of this order, then such piece rates are deemed adequate for such experienced employes and differences between earnings at these rates and the prescribed hourly rates do not have to be made up by the employer.

RECORDS TO BE KEPT BY THE EMPLOYER

8. Each employer shall keep for the inspection of the commission and its deputies records showing the following facts, concerning each female and minor employe:

1. Name and address.
2. Age.
3. Date of birth of all minors.
4. Date of entering and leaving employ and cause of leaving.
5. Experience at date of entering.
6. Time of beginning and ending each day and total number of hours worked per day.
7. Wages paid, per payroll period.
8. Output of employe, if production records are kept.

POSTING OF ORDER

9. Every employer employing females or minors shall keep posted a copy of this order, on a form prescribed by the commission, in a conspicuous place in the gen-

eral workroom and in the women's dressing rooms.

WHEN EFFECTIVE

10. This order shall become effective August 1, 1921.

This order and special orders referred to above are in force at the present time.

EXTENT OF THE LAW

The law covers all women and minors who are in receipt of or are entitled to any compensation for labor performed for any employer. As nearly as can be estimated from the United States Census Reports there are one hundred eighty-two thousand females engaged in gainful occupations, and eighty-two thousand males under twenty-one years of age gainfully employed. The only class of employes exempted are apprentices duly indentured under the supervision of the Industrial Commission.

EFFECTS

REPORT OF INDUSTRIAL COMMISSION TO ATTORNEY GENERAL OF WISCONSIN, FEBRUARY 10, 1923

General

Because of the fact that a statistical study was not made of the wages paid female and

minor employes prior to the date the first minimum wage order went into effect, an exact statistical statement of the effect of the minimum wage can not be made. However, some of the results have been so obvious that the Commission feels warranted in making certain definite statements regarding the results of the law.

In April, 1921, and April, 1922, a study was made of wages paid minors and female employes. The 1921 study covered 32,689 such employes, and the 1922 study covered 46,998. These studies showed that the minimum wage effective August 1, 1919, as well as the one established August 1, 1921, was considerably below the market wage. The following tabulation brings out this fact:

Hourly Wage	*1921*	*1922*
Less than 22 cents	5.1%	6.5%
22c to 25c	13.3%	7.1%
25c to 30c	23.4%	33.5%
30c and over	58.2%	52.9%

Nevertheless, the minimum wage law has been a potent cause in raising the lower end of the wage scale to the level of the cost of living. In certain industries, the entire wage level has been affected.

These industries are tobacco stemming, small telephone exchanges, stores in the rural districts, and small cities, and home work manufacture.

Tobacco stemming warehouses

It was found that tobacco stemming gives employment to an unusually large number of el-

derly women, many of whom are inefficient. On the other hand, it was found that the piece rates paid in most of the warehouses were so low that many other employes, in addition to the elderly women, were unable to make a living wage. After a conference with the officers of the companies which control most of the warehouses in the state, an agreement was reached that would permit all tobacco stemming warehouses to pay their women and minor employes either the time rates prescribed in the minimum wage act No. 1 or hte piece rate of 3 1/2c per pound which was one-half cent per pound more than the rate paid at most of the warehouses.

After this rate was formally adopted as the minimum wage order No. 6, reports were required from all the tobacco warehouses to make certain that back pay to August 1, 1919, was given to all women and minor employes who were paid less than the time rates of minimum wage order No. 1. Up to July 1, 1920, no less than 1442 women had been given back pay totaling $5,564.76.

Pea canneries

The situation in pea canneries is somewhat similar to that existing in tobacco stemming. That is, the work is highly seasonal and a large number of women are employed who ordinarily do not work outside the house. Thus, a supply of labor is tapped which is not available for regular employment and which may be induced to accept a low wage. In 1919, just prior to the es-

tablishment of the minimum wage of 22 cents an hour, 28 of the 90 pea canneries in the state paid some of their workers less than that amount.

Telephone exchanges

The wages in small telephone exchanges, particularly in the rural districts have heretofore probably been lower than in any other industry. The margin of profit of the employing companies has been small, and in many instances, being co-operative, they have not been conducted for profit at all.

Up to July 1, 1920, the Commission through correspondence and visits of deputies succeeded in recovering for 206 women and minor telephone operators a total of $22,439.23 as back pay. From July 1, 1920, to July 1, 1922, additional back pay was recovered for 171 women and minors in the amount of $9,653.55. The increase in wages of some operators as a result of the minimum wage law has been more than 100 per cent and for the industry as a whole has probably exceeded 33 1/3%.

Stores

Stores in the towns, villages, and very small cities of the state, it was found, were paying less than the minimum wage in a great many instances. Some of the strongest opposition to the minimum wage law came from the proprietors of such stores. No tabulation has been made of the back pay collected in these stores.

Even in the stores of the larger cities because

of the long number of hours worked, it was found that the weekly wage reduced to an hourly basis did not yield the minimum wage. The effect was to reduce the number of hours that the stores were kept open. Instead of keeping open two or three nights a week, the stores closed except perhaps on Saturday nights. However, in many towns of the state stores, exclusive of butcher shops and grocery stores, do not keep open any nights. During the summer, many dry goods stores and stores employing a considerable number of women close Saturday afternoons. The Commission therefore feels warranted in making the statement that besides raising wages in the stores, it has also reduced the number of hours worked by women and minors in such stores.

In some of the "chain" stores, wages were found to be exceedingly low, because of the fact that managers were allowed only a certain amount out of which they were obliged to pay the wages of clerks. The inevitable tendency was to depress wages to the utmost.

Home work or sweat shop system

The greatest evil of home work or sweat shop work is low wages. An investigation made in July, 1920, showed that eighteen per cent earned less than ten cents an hour, fifty-four per cent from ten to twenty cents an hour, twenty-two per cent from twenty to thirty cents per hour and six per cent over thirty cents. The minimum wage law of Wisconsin clearly covers the home

work. However, it is a very difficult matter to apply the law because this work is done at odd times and no record is kept of the hours of labor. The Commission, therefore, adopted an order providing that home workers must be paid piece rate which enables piece workers in the factories of average ability to earn a common wage. Where work is done at home which is not done at all in the factories, employers must determine what is the fair rate made in the factories where accurate time records are possible. Before issuing a license to engage in home work, the Commission makes a study of piece rates to determine whether they will yield the minimum wage.

Sweat shop system drives industry out of state

It is only in home work manufacture that the Commission has ever observed that industry was forced out of or kept out of the state, as is so frequently charged. Babies' handmade knitted wear is made to a large extent in New York sweat shops. These articles are sold at a very low price and several prospective manufacturers have come to the Commission for permission to employ home workers on this class of work at less than the minimum wage, contending that they can not compete with the Eastern product. At the present time there is only one manufacturer who has received a permit to give out homework of this kind and the kind of work he gives out is high class sample work. However, the Commission feels that the best interests of

the state are being conserved by the exclusion of a parasitic industry of this character.

Wisconsin factory-made knitted product not hampered in competition

On the other hand, the factory-made knitted product in this state is able to compete with the product of any other state. The census of manufacturers for 1919 shows that the number of knitting factories in this state increased from 68 to 72; the average number of wage earners in such factories increased from 6,244 to 8,736 and the cost of the product increased from $13,292,305.00 to $40,778,000.00 since 1914.

FURTHER EFFECTS

Learners more rapidly developed

In addition to the effects observed in specific industries as outlined above, the Commission has found that the minimum wage law has had the effect of more rapidly developing learners in given trades. Because of the fact that an employer must pay the minimum wage, he tries to develop a learner to the highest point of efficiency as soon as possible.

No displacement of women by men

There has not been a displacement of women by men because of the minimum wage law. This is apparent from the fact that the demand for

women workers at the Milwaukee employment office has increased relatively faster than the demand for men workers, since the establishment of the minimum wage law. The percentage of calls for female help as compared with the total number of calls for help were as follows for the last four fiscal years:

For the year ending June 30, 1919..20.9%
For the year ending June 30, 1920..27.2%
For the year ending June 30, 1921..29.9%
For the year ending June 30, 1922..31.7%

Minors not replaced by adults

It may further be stated that the minimum wage *per se* has not resulted in a replacement of minor employes by adults. During the fiscal year ended June 30, 1919, which was immediately prior to the establishment of the first minimum wage in this state, there were 21,444 child labor permits issued. During the fiscal year ended June 30, 1920, which is immediately subsequent to the starting of the minimum wage, there were 25,333 child labor permits issued.

INDEX OF POINTS AND CITATIONS.

POINTS.

PAGE

Beneficial effects of the Kansas statutes concerning minimum wages for women in industries 4

CITATIONS.

The Kansas statute regulating wages, hours and conditions of labor for women in industries 3

Chapter 275, Laws of Kansas, 1915, which is also set forth in sections 10495 to 10515, inclusive, General Statutes of Kansas, 1915..... 3

Amendment to the foregoing by chapter 263, Laws of Kansas, 1921, transferring administrative power from the Industrial Welfare Commission to the Court of Industrial Relations..... 3

Chapter 29, Laws of Kansas, 1920, establishing the Court of Industrial Relations 3

The Topeka Laundry Company v. The Court of Industrial Relations of the state of Kansas *et al.*, No. 45154, in the district court of Shawnee county, Kansas 4

The Topeka Packing Company v. Court of Industrial Relations of the State of Kansas *et al.*, No. 45155, in the district court of Shawnee county, Kansas 4

The decision of the district court of Shawnee county, Kansas in the two foregoing cases 4

The Court of Industrial Relations of the State of Kansas v. The Charles Wolff Packing Company, No. 23702, 109 Kan. 629, 643..... 4

The foregoing case, under the title of The Charles Wolff Packing Company v. the Court of Industrial Relations of the State of Kansas, No. 739, October Term, 1922, set for argument in this court, April 23, 1923..... 5

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

JESSE C. ADKINS *et al.*, constituting THE MINIMUM WAGE BOARD OF THE DISTRICT OF COLUMBIA, *Appellants*,

vs.

THE CHILDREN'S HOSPITAL OF THE DISTRICT OF COLUMBIA, a Corporation.

No. 795.

JESSE C. ADKINS *et al.*, constituting THE MINIMUM WAGE BOARD OF THE DISTRICT OF COLUMBIA, *Appellants*,

vs.

WILLIE A. LYONS.

No. 796.

BRIEF FOR THE STATE OF KANSAS.

This brief is filed by leave of court because of the interest of the state of Kansas in the questions presented in these cases.

There is a statute of Kansas regulating the subject of wages, hours and conditions of labor of women in industrial occupations. It was enacted in 1915—chapter 275, Laws of Kansas, 1915—and is also set forth in sections 10495 to 10515, inclusive, General Statutes of Kansas, 1915. This was amended by chapter 263, Laws of Kansas, 1921. In the original act powers of administration were vested in an Industrial Welfare Commission. By the act of 1921 these powers were transferred to the Court of Industrial Relations. The latter body was created by chapter 29, Laws of Kansas, 1920, which act taken alone covered labor controversies in occupations affected with a public interest.

By the act of 1915 as amended in 1921, the Court of Industrial Relations is given authority to fix a minimum scale of wages for

women engaged in industries. This power was formerly vested in the Industrial Welfare Commission.

Under this legislation orders have been made fixing minimum rates of wages for women from time to time since the statute of 1915 took effect, and such orders have been enforced.

By Industrial Welfare Order No. 12, of May 19, 1922, relating to women employees in laundries, dyeing, dry cleaning and pressing shops, nine hours was fixed as a maximum for a day's work and forty-nine and a half hours as a maximum for a week's work, with some exceptions both as to a day's work and a week's work, allowing overtime in cases of emergency. Minimum wages of women employees in such places were fixed at $11 per week, where they had served six months' apprenticeship. The apprenticeship period was divided into two spaces of three months each, and the minimum wages for the first three months were $7.50 per week and for the second three months $9 per week.

By Industrial Welfare Order No. 13, May 19, 1922, concerning women employees in manufacturing occupations, nine hours was fixed as a maximum for a day's work and forty-nine and a half hours for a week's work, with some exceptions, allowing overtime in cases of emergency.

Minimum wages were fixed at $11 per week for those who had served an apprenticeship. Lower wages were fixed for the period of apprenticeship, varying from $6.50 per week to $9 per week, according to the variety of the occupation and period of service.

The validity of these two orders fixing minimum wages was contested on constitutional grounds in two cases in the district court of Shawnee county, Kansas, of The Topeka Laundry Company, a corporation, plaintiff, v. The Court of Industrial Relations of the State of Kansas *et al.*, defendants, No. 45,154; and The Topeka Packing Company, a corporation, plaintiff, v. The Court of Industrial Relations, State of Kansas, *et al.*, defendants, No. 45,155. On September 20, 1922, the district court rendered a decision in those cases, upholding the validity of the two orders.

In the case of the Court of Industrial Relations, plaintiff, v. The Charles Wolff Packing Company, defendant, No. 23,702, 109 Kan. 629, opinion filed October 8, 1921, other questions were presented to the court than those here involved, including the validity of some provisions of chapter 29, Laws of Kansas, 1920, above referred to, and the validity of an order of the Court of Industrial Relations fixing minimum wages of both men and women in a meat-packing

plant, which by the statute was declared to be affected with a public interest. The court in its reasoning in the opinion stated, "Laws fixing minimum wages and hours of labor for women are justified on moral and physical grounds," and cited cases where the establishment of minimum wages for women had been held valid. (109 Kan. 643.)

The decision in the last case, which was on other questions than those here presented and sustained the validity of the order made by the Court of Industrial Relations, is before this court in that case, pending on writ of error, set for argument April 23, 1923, entitled The Charles Wolff Packing Company v. The Court of Industrial Relations of the State of Kansas, No. 739, October term, 1922.

Before the enactment of the statute of 1915, the wages paid a large proportion of the women laboring in Kansas industries were below the amount absolutely necessary for their support. Soon after the statute took effect, orders were made thereunder which fixed minimum wages above the minimums they had been receiving, and subsequent orders were made from time to time as prices advanced. At present the wages received by women in Kansas industries are substantially higher, compared to living cost, than they were before the statute of 1915 took effect. Part of this increase has been caused by the general advance in prices and the increased demand for women's labor, as a result of the World War and the participation of the United States therein. Part of the increase has been caused by orders made under the statute. The effect of the operation of the statute and the orders made thereunder, has been to establish minimum wages which at least afford women workers sufficient to pay their economical and absolutely necessary living expenses. The legislation has given general satisfaction in the state and is strongly and steadfastly supported by public opinion. Before the statute, many women workers in industries were not fully self-supporting after the apprenticeship stage, although their work was adequate in amount and well done. The insufficiency of their wages was not due to any deficiency in their labor, but was caused by economic pressure against those workers who were not in a position to contend against it. By the unpaid portion of their labor they helped to support the industries or to give lower rates to the customers of their employers, or both. It was a tribute they were forced to pay to others for the privilege of earning a partial maintenance. No doubt there is something yet to be accomplished in the administration of the law, but it has diminished a glaring injustice, and has

helped competent women workers, doing a full day's work, toward earning their own bare support.

If the protection thus afforded by the state should be abandoned, there would be a relapse in great part to the former unfair and oppressive situation. The ballot which is now possessed by women can only help their condition as workers by means of laws and their enforcement. It is of no avail in the direct industrial struggle, although it is of potency in procuring state regulation.

The number of lines of work in industries which can be done by women is limited. Those classes of work which they are adapted to they in the main perform as well or better than men, but they do not have the range of occupations afforded to men. They are more tied to their homes and families and are not usually free to seek for employment at any other place than their home towns. They do not have the strength or assertion to contest effectively with their employers for better pay or conditions. Their industrial salvation must come, if at all, from the state. The law has always in various forms recognized their disadvantages, and has to some extent in the past protected them against overreaching and imposition. In recent times, in this country, there has been great improvement in their conditions, but the law still recognizes the weakness of their sex. The legislation in many of the states to regulate the hours and conditions of labor and the minimum wages of women has been enacted to protect them against injustice, deprivation and oppression, and has been helpful.

There can be no fundamental right of an employer to obtain any part of the labor of women for which he does not pay. The convenience and profits of employers and cut prices to consumers must yield to the just requirement that women workers should receive sufficient pay for competent and adequate labor to afford them bare self-support. The interests of society call for the enforcement of this principle.

Respectfully submitted,

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